IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.2369 OF 2004

Rajendra Babulal Sarnot ..Petitioner

Vs.

Sangita Sunil Bharadiya ..Respondent

....

Mr.I.M.Khairdi for Petitioner
Mr.Uday Warunjikar for Respondent

....

CORAM : B.H.MARLAPALLE,J.
DATE : MARCH 7,2005

P.C.:

1. Heard Mr.Khairdi, the learned counsel for the petitioner and Mr.Warunjikar, the learned counsel for the respondent.

2. R.C.S.No. 402 of 1997 has been filed under Section 6 of the Specific Relief Act which has been subsequently registered as a special Civil Suit No.35 of 2002. In the said suit, the present respondent no.1 is the only defendant originally and original owners of the suit property i.e. city survey no. 2557 admeasuring 860 sq.ft. were not impleaded as defendants. The respondent no.1 filed the reply and pointed out that the property had changed hands on more than one occasions and this reply was dated 21.11.1997. The plaintiffs then moved an amendment

application at Exh.34 on or about 27.3.2001 i.e. after about three and half years and prayed for impleading additional five persons as defendant nos. 2 to 6. The plaintiffs prayed for addition of para 5A in the plaint but so far as the relief was concerned, there was no amendment sought and the relief in the original plaint remained as against the respondent no.1. The trial Court by reading the relief sought for, came to the conclusion that it was not necessary to amend the plaint to determine controversy between the parties. Though it is a cryptic order, the fact remains that the plaintiff failed to take due steps initially when the suit was moved under Section 6 of the Specific Relief Act inspite of sufficient knowledge of alienation of suit property to different persons and subsequently by the belated amendment his half hearted efforts was tried to be put up before the Court. The plaintiff has to blame himself. The amendment sought for was rightly turned down as not germane and therefore, no interference is called for in the impugned order.

3. The petition is rejected summarily. However, this order would not come in the way of the petitioner to seek alternative remedy that may be available in law.

[B.H.MARLAPALLE,J.]